MONTANA LEGISLATIVE HISTORY

Chapter 31 ~~19~~ 2001

Bill H 113 S _____ Original bill & history ✓ C

H. Committee on Agriculture			S. Committee on Agriculture, Livestock & Irrigation		
Hearing Date(s)	1/11	✓ C	Hearing Date(s)		C
		C			C
		C			C
		C			C
Date Out	1/11	✓ C	Date out		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

HB 113 Introduced by Devlin *LC0218 Drafter: Lee Evans*

Revise Grazing District Laws

By Request of Department of Natural Resources and Conservation

12/18	Introduced		
12/28	Referred to Agriculture		
1/11	Hearing		
1/11	Committee Executive Action--Bill Passed as Amended	18	0
1/12	Committee Report--Bill Passed as Amended		
1/13	2nd Reading Passed	100	0
1/15	3rd Reading Passed	98	0
	Transmitted to Senate		
1/16	Referred to Agriculture, Livestock and Irrigation		
2/09	Hearing		
2/12	Committee Executive Action--Bill Concurred	8	0
2/12	Committee Report--Bill Concurred		
3/01	2nd Reading Concurred on Voice Vote	48	0
3/02	3rd Reading Concurred	48	0
	Returned to House		
3/03	Sent to Enrolling		
3/05	Returned from Enrolling		
3/06	Signed by Speaker		
3/07	Signed by President		
3/07	Transmitted to Governor		
3/13	Signed by Governor		
3/13	Chapter Number Assigned		
	Chapter Number 31		
	Effective Date: 3/13/2001 - All Sections		

HB 114 Introduced by Story *LC0222 Drafter: Vandenbosch*

Revise Water Use Laws - Define Developed Spring

By Request of Department of Natural Resources and Conservation

12/18	Introduced		
12/28	Referred to Natural Resources		
1/15	Hearing		
1/23	Committee Executive Action--Bill Passed as Amended	19	1
1/23	Committee Report--Bill Passed as Amended		
1/26	2nd Reading Passed	99	1
1/27	3rd Reading Passed	99	0
	Transmitted to Senate		
1/29	Referred to Agriculture, Livestock and Irrigation		
3/05	Hearing		
3/06	Committee Executive Action--Bill Concurred	9	0
3/06	Committee Report--Bill Concurred		
3/07	2nd Reading Concurred on Voice Vote	50	0
3/08	3rd Reading Concurred	49	0
	Returned to House		
3/09	Sent to Enrolling		
3/09	Returned from Enrolling		
3/09	Signed by Speaker		
3/12	Signed by President		
3/13	Transmitted to Governor		
3/20	Signed by Governor		

HOUSE BILL NO. 113

INTRODUCED BY R. DEVLIN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE GRAZING DISTRICT LAWS TO REMOVE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM STATE DISTRICT LAWS EXCEPT FOR ADMINISTRATIVE ATTACHMENT PURPOSES; CONFORMING USES TO DEFINED TERMS; AMENDING SECTIONS 76-16-102, 76-16-103, 76-16-104, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-112, 76-16-113, 76-16-201, 76-16-202, 76-16-203, 76-16-206, 76-16-208, 76-16-209, 76-16-211, 76-16-212, 76-16-213, 76-16-301, 76-16-302, 76-16-303, 76-16-307, 76-16-309, 76-16-310, 76-16-316, 76-16-317, 76-16-318, 76-16-320, 76-16-323, 76-16-325, 76-16-401, 76-16-402, 76-16-403, 76-16-404, 76-16-406, 76-16-407, 76-16-408, 76-16-409, 76-16-410, 76-16-411, 76-16-412, 76-16-413, AND 76-16-414, MCA; REPEALING SECTION 76-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-16-102, MCA, is amended to read:

"**76-16-102. Purpose.** The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit ~~grazing~~ state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ~~ranch~~ properties ~~as defined herein~~."

Section 2. Section 76-16-103, MCA, is amended to read:

"**76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.

(2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local ~~grazing~~ state district.

(3) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

(4) "Commensurate property" means land that is privately owned or controlled and that is not range.

(5) "Commission" means the Montana grass conservation commission provided for in 76-16-112.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range ~~for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945,~~ for a 5-year period immediately preceding the date of organization of the state district ~~districts~~.

(8) "Directors" means the board of directors of a state district provided for in 76-16-301.

~~(8)~~(9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in ~~grazing~~ state district assets.

~~(9)~~(10) "Permits" are evidence of grazing privileges granted by state districts.

~~(10)~~(11) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(11)~~(12) "Range" is the land within a ~~grazing~~ state district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(12)~~(13) "Secretary" means the secretary of the Montana grass conservation commission.

~~(13)~~(14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

Section 3. Section 76-16-104, MCA, is amended to read:

"**76-16-104. Role of the commission ~~department~~.** (1) The commission ~~department~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.

(2) The commission ~~department~~ may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 4. Section 76-16-106, MCA, is amended to read:

"**76-16-106. Commission fees.** (1) The commission may impose fees against the state ~~grazing~~ districts ~~of the state~~ in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Section 5. Section 76-16-107, MCA, is amended to read:

"**76-16-107. Range for wild game animals.** In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity

to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts."

Section 6. Section 76-16-108, MCA, is amended to read:

"**76-16-108. Nature of rights.** (1) ~~Preferences~~ Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter."

Section 7. Section 76-16-109, MCA, is amended to read:

"**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, ~~at its discretion and~~ for good cause shown, permit additional testimony to be submitted."

Section 8. Section 76-16-111, MCA, is amended to read:

"**76-16-111. What constitutes receipt of notice.** In all cases where notices are given to permittees

under this chapter by ~~registered or~~ certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission."

Section 9. Section 76-16-112, MCA, is amended to read:

"76-16-112. Creation of Montana grass conservation commission -- membership -- meetings -- compensation. (1) There is a Montana grass conservation commission. The commission ~~must be~~ is composed of five members appointed by the governor to serve staggered 3-year terms. ~~Beginning on January 1, 2000, one member shall serve a 1-year term and two members shall serve 2-year terms, with assignment of terms based on a random drawing.~~

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state ~~grazing~~ district;

(ii) two members who hold active grazing preference rights within a state ~~grazing~~ district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state ~~grazing~~ districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) The commission shall meet annually at the main offices of the department in Helena. The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 14 days' written notice to the commission members of the time and place of the meeting. A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are

entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission."

Section 10. Section 76-16-113, MCA, is amended to read:

"**76-16-113. Powers of commission.** The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state ~~grazing~~ districts, including appeals of decisions made by the board of directors of an individual state ~~grazing~~ district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and ~~cooperative~~ state ~~grazing~~ districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter; ~~and~~

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state ~~grazing~~ districts that, for whatever reason, no longer have access to historical grazing preference records;

(4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;

(5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

(6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;

(7) requiring state districts to annually furnish itemized financial reports; and

(8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 11. Section 76-16-201, MCA, is amended to read:

"76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.

(2) The statement ~~shall~~ must set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the state district or county, which may not be less than 30 days or more than 60 days after receipt of the statement."

Section 12. Section 76-16-202, MCA, is amended to read:

"76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state ~~grazing~~ district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks~~, the~~ in a newspaper of general circulation in the area. The first publication ~~to~~ must be at least 30 days prior to the date of hearing~~, in a newspaper of general circulation in the area~~.

(2) The commission shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation."

Section 13. Section 76-16-203, MCA, is amended to read:

"76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the state district, the commission may issue a certificate of approval."

Section 14. Section 76-16-206, MCA, is amended to read:

"76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the state district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the state district possesses the same powers and is subject to the same obligations as if incorporated under this chapter."

Section 15. Section 76-16-208, MCA, is amended to read:

"76-16-208. Adoption of bylaws and periodic review -- annual report. (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated state district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. ~~The first review and update must be completed no later than January 1, 2001. Subsequent~~ A review and update must be completed at reasonable intervals, not to exceed 5 years.

(2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the state district. The annual reports must include an updated plat depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences."

Section 16. Section 76-16-209, MCA, is amended to read:

"76-16-209. Alteration of state district. (1) A state district may change the boundaries of the state district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging

state district and approved by the commission after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing."

Section 17. Section 76-16-211, MCA, is amended to read:

"**76-16-211. Dissolution of state district.** (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the state district is no longer feasible, beneficial, and desirable to the majority of members of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve the state district.

(2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the state district is located."

Section 18. Section 76-16-212, MCA, is amended to read:

"**76-16-212. Distribution of state district assets.** (1) When a hearing on the request for dissolution has been held before the commission and the ~~board's~~ consent of the board of directors has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or ~~in~~ both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. State district ~~District~~ members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process."

Section 19. Section 76-16-213, MCA, is amended to read:

"**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings must be made to the ~~department~~ commission by the directors. Upon the approval of the report, the

~~department~~ commission shall order the state district dissolved."

Section 20. Section 76-16-301, MCA, is amended to read:

"76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the commission ~~department~~ as provided in this chapter."

Section 21. Section 76-16-302, MCA, is amended to read:

"76-16-302. Membership in state district. (1) Membership in ~~the~~ a state district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the state district, except that the agent of a person entitled to membership in the state district may become a member in place of the agent's principal.

(2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the state district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the state district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.

(3) Livestock producers owning or controlling base property within the designated boundaries of the state district and who held grazing preference during the preceding grazing season or at the time of voting must be designated as permittee members."

Section 22. Section 76-16-303, MCA, is amended to read:

"76-16-303. Voting rights. Only permittee members in good standing as set forth in the state district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the state district bylaws."

Section 23. Section 76-16-307, MCA, is amended to read:

"76-16-307. Leasing of state lands. State land that is situated within the boundaries of a ~~grazing~~

state district created under this chapter may be leased by one or more members of a ~~grazing~~ state district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a ~~cooperative~~ state district may assist members of a ~~grazing~~ state district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section."

Section 24. Section 76-16-309, MCA, is amended to read:

"76-16-309. Knowledge of state district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district."

Section 25. Section 76-16-310, MCA, is amended to read:

"76-16-310. Permit required to run livestock in state district. (1) ~~No~~ An owner or person in control of livestock ~~shall~~ may not permit ~~the same~~ livestock to run at large or under herd within the exterior boundaries of ~~any~~ a state district unless the owner or person in control of ~~such~~ the livestock ~~shall~~ first obtains ~~obtain~~ a grazing permit ~~for same~~ from the ~~such~~ state district.

(2) The owner or person in control of ~~such~~ livestock running at large or under herd within a state district without a permit from the state district or in excess of ~~such~~ the permit ~~shall be~~ is liable for all damages sustained ~~thereby~~ by any member, permittee, or state district that are a result of the person's unpermitted use of the state district. If ~~any such~~ livestock wrongfully ~~enters~~ enter a state ~~upon premises within such~~ district, the owner or person in control of ~~such~~ the trespassing livestock, who willfully or negligently permits ~~same~~ livestock to run at large within the state district without first obtaining a permit ~~therefor~~ from the state district, ~~shall be~~ is guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be punished by a fine in an amount not less than $10 or more than $500. ~~and, in~~ In addition to a fine, the owner or person is ~~said punishment, shall be~~ liable for all damages that are caused by the trespassing livestock ~~sustained thereby to the party entitled thereto~~.

(3) This provision ~~shall~~ does not require any person to obtain a grazing permit to graze livestock ~~upon~~ on land that the person owns or controls ~~owned or controlled by him~~ within a ~~such~~ state district if the stock ~~so~~ being grazed ~~is~~ are restrained from running at large within ~~such~~ the state district and from grazing ~~upon~~ on any other lands within the state district."

Section 26. Section 76-16-316, MCA, is amended to read:

"76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

(2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:

(a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;

(b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and

(c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law."

Section 27. Section 76-16-317, MCA, is amended to read:

"76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale ~~shall~~ must be applied by the sheriff, after first deducting ~~his~~ the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up ~~such~~ the livestock. ~~, and the~~ The remainder of the proceeds, if any, may be paid over to the owner of ~~such~~ the livestock, if known. ~~, and if~~ If the owner is not known, then ~~such~~ the remainder ~~shall~~ must be deposited with the county treasurer, who shall keep the ~~same~~ remainder of the proceeds in a public fund to be designated state ~~grazing~~ district fund (giving the name of the state district). A separate fund, styled as above, ~~shall~~ must be kept by the county treasurer for each state district ~~of said districts~~ within ~~his~~ that county. The county treasurer shall ~~make a~~ record ~~of~~ the number, ~~and~~ type, and brands, if any, of animals sold ~~and the brands on same, if any~~, the amount received for the animals ~~same~~, and the amount of deductions. The record ~~shall~~ must be open to public inspection.

(2) ~~Any~~ A person claiming ~~making claim of~~ ownership of the ~~such~~ livestock and submitting proof of ownership to the board of county commissioners ~~at any time~~ within 1 year from date of sale ~~and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be~~ is entitled to receive any ~~such~~ excess received from the sale of the ~~such~~ livestock, provided the claim is to the satisfaction of the board.

(3) Any money received from the sale of the ~~any such~~ livestock ~~which shall~~ that is not ~~be so~~ claimed within 1 year after the ~~such~~ sale must ~~shall~~ be transferred to the general fund of the county ~~at the expiration of said period~~."

Section 28. Section 76-16-318, MCA, is amended to read:

"76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state ~~grazing~~ district or an agent of a state district ~~thereof~~ any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 is ~~shall be~~ guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punishable by a fine not exceeding $200."

Section 29. Section 76-16-320, MCA, is amended to read:

"76-16-320. Maintenance of fences. (1) ~~Regarding fences within the external boundaries of state districts, the~~ The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the ~~such~~ state district must ~~shall~~ be borne by the ~~such~~ member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the ~~such~~ state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the ~~such~~ cost of construction and maintenance of fence, the state district's proportionate share of the ~~such~~ costs and maintenance must ~~shall~~ be financed only by assessments levied by the state district against the permittee members of the state district and upon consent ~~thereto~~ by 55% of the ~~such~~ permittee members."

Section 30. Section 76-16-323, MCA, is amended to read:

"76-16-323. ~~District~~ State district finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district."

Section 31. Section 76-16-325, MCA, is amended to read:

"**76-16-325. Compliance with commission orders required.** (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the state district or county and cite the directors of the state district to appear before the commission.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the state district shall elect new officers. During the period until the election, the commission may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated."

Section 32. Section 76-16-401, MCA, is amended to read:

"**76-16-401. Distribution of grazing preferences.** When a state district is organized, grazing preferences ~~shall~~ must be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property ~~as heretofore defined~~ may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the grazing preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, ~~preferring those that have used the range for any 3 years or any~~

~~2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of state districts organized after March 15, 1945,~~ preferring those that have used the range 5 years immediately preceding the organization of the state district ~~such districts~~."

Section 33. Section 76-16-402, MCA, is amended to read:

"76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When a ~~such~~ temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by the ~~such~~ permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by the ~~such~~ permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.

(2) However, ~~such~~ temporary permits ~~shall at all times be merely~~ are privileges granted from year to year, and their possession does not ~~shall in no event~~ establish a grazing preference right unless ~~such~~ a grazing preference right ~~be~~ is expressly granted by the state district and in the manner ~~herein~~ provided in this part."

Section 34. Section 76-16-403, MCA, is amended to read:

"76-16-403. Procedure if reduction in grazing privileges necessary. (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a ~~cooperative~~ state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district."

Section 35. Section 76-16-404, MCA, is amended to read:

"76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state ~~grazing~~ district based on dependent commensurate property or commensurate property ~~must~~

shall make application within 1 year after ~~said~~ the state district is ~~shall have been~~ organized to qualify for ~~said~~ grazing preference~~;~~. ~~provided, however~~ However, all permittees ~~shall~~ must be entitled to benefits accruing under 76-16-401 through 76-16-403."

Section 36. Section 76-16-406, MCA, is amended to read:

"76-16-406. Transfer of grazing preferences. (1) Upon application by a permittee, the state district with the approval of the commission may allow a grazing preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of grazing preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the grazing preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.

(3) All expenses involved under the application must be borne by the applicant."

Section 37. Section 76-16-407, MCA, is amended to read:

"76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary of the state district upon the direction of that board shall give notice ~~thereof~~, setting forth in general the application and the time and place of a hearing ~~thereon~~ on the application as fixed by the board. A copy of the notice ~~shall~~ must be given or mailed to the applicant and ~~shall~~ must be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the state district~~, and the~~. The notice ~~shall~~ must also be posted for at least 2 full weeks prior to the hearing in three public places within the state district.

(2) The date of the hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections to the application ~~thereto~~."

Section 38. Section 76-16-408, MCA, is amended to read:

"76-16-408. Effect of transfer of grazing preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the grazing preference transferred."

Section 39. Section 76-16-409, MCA, is amended to read:

"76-16-409. Transfer of underlying property. (1) When the land to which a grazing preference is attached changes its control or ownership, the grazing preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing preferences may be revoked by the state district."

Section 40. Section 76-16-410, MCA, is amended to read:

"76-16-410. Compensation to state district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value ~~shall~~ must be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it ~~shall~~ must be fixed by the commission ~~department~~."

Section 41. Section 76-16-411, MCA, is amended to read:

"76-16-411. Grazing permits to owners of land not controlled by state district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by ~~said~~ the state district and not surrounded by a legal fence, any person owning or controlling ~~such~~ these lands ~~shall have~~ has the right to obtain a grazing permit from the state district, the size of which ~~shall~~ must be determined by the carrying capacity of ~~such~~ the land, full consideration being given for location of necessary stock water.

The use of ~~such~~ the permit ~~shall be~~ is subject to all regulations by the state district.

(2) If the person owning or controlling ~~such~~ the land declines to secure ~~such~~ a permit or fails to lease ~~such~~ the land to the state district at a fair lease rental and fails to fence ~~such~~ the land at ~~his own~~ the person's expense, ~~he~~ the person ~~shall~~ is not ~~be~~ entitled to recover damages for trespass by stock grazing under permit, but the state district ~~shall~~ may not issue a permit to use the carrying capacity of ~~such~~ the land."

Section 42. Section 76-16-412, MCA, is amended to read:

"76-16-412. Revocation of grazing preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by ~~registered or~~ certified mail that the grazing preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by ~~registered or~~ certified mail that the grazing preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the permittee or owner fails to pay the charges or comply."

Section 43. Section 76-16-413, MCA, is amended to read:

"76-16-413. Effect of revocation. (1) When a grazing preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a grazing preference.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws."

Section 44. Section 76-16-414, MCA, is amended to read:

"76-16-414. Equalization of state district assets. (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the state district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.

(2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be as prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may have against a former member.

(3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the grazing preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting."

NEW SECTION. **Section 45. Repealer.** Section 76-16-105, MCA, is repealed.

NEW SECTION. **Section 46. Effective date.** [This act] is effective upon passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN DONALD L. HEDGES**, on January 11, 2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Donald L. Hedges, Chairman (R)
Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Norma Bixby (D)
Rep. Gilda Clancy (R)
Rep. Rick Dale (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: None.

Members Absent: Rep. Christopher Harris (D)

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 113, 1/11/2001
Executive Action: HB 113

HEARING ON HB 113

Sponsor: REPRESENTATIVE RONALD DEVLIN, HD 3, Prairie, Custer, Rosebud

Proponents: **Commissioner Phil Hill**
Steve Pilcher, Mt. Assoc. of State Grazing Districts
Steve Schmitz, Dept. of Natural Resources and Conservation
Bud Clinch, Dept. of Natural Resources and Conservation

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 2.4}

Representative Ronald Devlin, HD 3, Prairie, Custer, Rosebud, and Grazing District, submitted written testimony. **EXHIBIT(agh08a01)**

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4}

Bud Clinch, Department of Natural Resources and Conservation, stated that this bill is fairly simple and one of clean-up language. In the last 6 to 8 years there has been discussion in the grazing districts about the implementation of this body of law and of the appropriateness of services and responsibilities being attached to the DNRC. In the last legislative session action was taken in HB 444 to correct the way that this body of law is administered and to implement the Grass Conservation Commission. When responsibilities are transferred from one entity to the other it is important to go through and strike the references to the previously responsible agency and get it into the hands of the new entity. There are numerous references in HB 444 to the DNRC that need to be replaced by the Grass Conservation Commission. That is what this bill does.

Commissioner Phil Hill, Grass Conservation Commission, urges a do pass from the committee.

Steve Pilcher, Montana Stock Growers Association, Montana Association of State Grazing Districts, stated that the Montana Association of State Grazing Districts has been very active in ensuring that they have available to them the assistance and guidance that is necessary for them to carry out their responsibilities. The 1934 Taylor Grazing Act was designed to provide protection for Montana's acreage of resources. In 1939

grazing districts were established, along with the original GCC, also to provide protection. After several years these responsibilities were transferred to the DNRC. In the 1999 legislative session there was legislation passed to provide a study of the effectiveness of the arrangement that existed; recommendation was made for the re-establishment of the GCC and was accomplished through HB 444. This is working well, and changes made in HB 113 will increase the effectiveness of this.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 11.5}

REPRESENTATIVE LINDA HOLDEN asked who the members of the Montana Grass Conservation Commission are. **Bud Clinch** listed the members of the commission as follows: Mr. Bill Loehding, Mr. Duwayne Ozark, Mr. Phil Hill, Mr. Gary Unruh, Ms. Sandra Brown. **REP. HOLDEN** asked how they are appointed. **Mr. Clinch** replied that they are appointed by the Governor.

REPRESENTATIVE DAVE GALLIK asked why the word grazing district was changed to state district. **Krista Lee Evans** replied that grazing district was not defined, whereas state district is defined in title 76, chapter 16, part 1.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 14}

REP. DEVLIN stated that HB 113 is proposed as a clean-up legislation, in no way can it change the intent of HB 444. There has been an amendment proposed concerning changing the notification period from 14 days to 7 days prior to when the commission is going to meet. He recommends a do pass on HB 113.

{Tape : 1; Side : A; Approx. Time Counter : 15.1}

EXECUTIVE ACTION ON AMENDMENT to HB 113

Motion: REPRESENTATIVE LARRY LEHMAN moved for the adoption of the amendment.

DISCUSSION:

{Tape : 1; Side : A; Approx. Time Counter : 17.7}

REPRESENTATIVE JIM KEANE asked why they changed from 14 to 7 days. **Krista Lee Evans** replied that it had been requested, but that she did not know the reason for the request. **REP. HEDGES** replied that he would make the assumption that the commission may want to have a meeting in a shorter period of time than a 14 day period. 7 days would be sufficient to call the people together and to get the notices out and posted publicly. **Ms. Evans** explained that the amendment is not dealing with when they are noticing the public, but when they are noticing the other commissioners.

REP. GALLIK asked about the change from 14 days to 7 days and the effect of disseminating it to the public. **Ms. Evans** replied that she would assume that open meeting laws would require to notice the public and that 7 days would meet the open meeting requirement.

Vote: REPRESENTATIVE KATHLEEN GALVIN-HALCRO called for question on the amendment. **Motion carried Unanimously. 18-0**

EXECUTIVE ACTION ON HB 113

Motion: REP. GALLIK called for question on **HB 113. HB 113 carried unanimously. 18-0**

EXHIBIT 1
DATE 01/11/01
HB 113

HOUSE BILL NO. 113

INTRODUCED AT THE REQUEST OF DNRC

Mr. Chairman and members of the House Agriculture Committee, my name is Ron Devlin from Terry and the Representative of House District 3.

- The Department of Natural Resources and Conservation has asked me to sponsor this bill as a "clean-up" measure to remove references to DNRC from state district laws except for administrative attachment of the Montana Grass Conservation Commission.

- The 1999 Legislature passed House Bill No. 444 which created the Grass Conservation Commission and directed that it be attached to DNRC. In effect, the Commission was to assume responsibilities over grazing districts previously held by the Department. It became apparent after the legislative session that several references to the Department should be revised to clearly reflect the intent of HB 444.

- It is my understanding that the Department has coordinated with the Commission and the Montana Association of State Grazing Districts on this bill.

- A representative of the Department is here to address the specifics of the bill and to answer any questions that you may have.

Thank you Representative Hedges and members of the Committee.

Clause does not change intent of Ordinance

Clause.
recommend do pass
- Ammendment has been proposed Concerning Notification Period on Page 5 from 14 days to 7 days ~~Secretary~~ has copies of Proposed ammendment
Kristen Shelton

HOUSE OF REPRESENTATIVE

ROLL CALL

AGRICULTURE COMMITTEE

DATE: January 11, 2001

NAME	PRESENT	ABSENT	EXCUSED
Donald L. Hedges, Chair	✓		
Linda Holden, Vice Chair	✓		
Ralph Lenhart, Vice Chair	✓		
Darrel Adams	✓		
Norma Bixby	✓		
Gilda Clancy	✓		
Rick Dale	✓		
Dave Gallik	✓		
Kathleen Galvin-Halcro	✓		
Christopher Harris		✓	
Verdell Jackson	✓		
Jim Keane	✓		
Larry Lehman	✓		
Holly Raser	✓		
Clarice Schrumpf	✓		
Frank Smith	✓		
Butch Waddill	✓		
Karl Waitschies	✓		
Merlin Wolery	✓		
Krista Lee Evans, Staffer	✓		
Robyn Lund, Secretary	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture Committee

DATE 01/11/01

BILL NO. HB 113 SPONSOR(S) Rep. Devlin

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI	Phil Hall	Jordan Mt.	Comm.
POI	Casey Aycock	Helena	visiting
(P)OI	STEVE PILCHER	HELENA	MT Assn. of State Grazing Dist.
(P)OI	Steve Schmitz	Helena	DNRC
PO(I)	Mark McNamer	Helena	Self
(P)OI	Bob Clivett	Helena	DNRC
POI			
POI			
POI			
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POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.frm

HOUSE STANDING COMMITTEE REPORT

January 11, 2001

Mr. Speaker:

We, your committee on **Agriculture** report that **House Bill 113** (first reading copy – white) **do pass as amended.**

Signed: Donald L. Hedges
Representative Donald L. Hedges, Chair

And, that such amendments read:

1. Title, page 1, line 7.
Following: "PURPOSES;"
Insert: "CHANGING THE REQUIREMENT FOR WRITTEN NOTICE TO THE COMMISSION MEMBERS, WITH REGARD TO MEETINGS, FROM 14 DAYS TO 7 DAYS;"

2. Page 5, line 25.
Strike: "14"
Insert: "7"

- END -

Committee Vote:
Yes 18, No 0.

081633SC.hdc

1-11-01 4:30pm

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **VICE CHAIRMAN PETE EKEGREN**, on February 9, 2001 at 3:20 P.M., in Room 422, Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 141, HB 113 1/20/01
Executive Action: HB 141, HB 113, SB 245, HB 246, SB 261, SB 196

HEARING ON HB 141

Sponsor: REP. ROGER SOMERVILLE, HD 78, KALISPELL

Proponents: Steve Street, Montana Mint Growers Association
Ralph Peck, Montana Department of Agriculture

Opponents: none

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, opened by explaining the bill as a tax reduction or a fee reduction which, in the new language, changes from $50 per year to $20 per every 10 years for mint growers. Fiscal impact of the bill is very minor.

Proponents' Testimony:

Steve Street explained the process in which mint goes through, from the grower, to the distiller or buyer and then from the buyer, to the end user. He noted that mint can taste and smell differently even if the mint was in the same field and harvested in the same day. The buyer or distiller gets the mint oil to "an end user spec" because the end users want mint oil that always is the same. The mint oil is sold to the buyers. Between 5 and 15 cents per pound of mint is deducted from the growers check. The money, is remitted to the Department of Agriculture and then appropriated for research. Presently, this fee is taken out of the purchase price of oil from the farmer. When a small buyer comes to Montana, a license is required. He stated, it is easier to exempt people who now have to buy a $50 license to buy $30 of mint oil. This is only a "clean-up".

Ralph Peck explained the reasons for the Departments support of the bill. He stated the reason for licensing buyers was to know who is buying mint oil and therefore, who to assess, and remitting the money so it does not disappear.

Opponents' Testimony: none

Questions from Committee Members and Responses: none.

Closing by Sponsor: REP. ROGER SOMERVILLE closed HB 141.

HEARING ON HB 113

Sponsor: REP. RONALD DEVLIN, HD 3, TERRY

Proponents:

Ray Beck, Montana Department of Natural Resources and Conservation

Steve Pilcher, Montana Stockgrowers Association, Montana Public Lands Council, and Montana Association of State Grazing Districts.

Opponents: none

Opening Statement by Sponsor:

REP. RONALD DEVLIN, HD 3, TERRY stated this was a clean-up bill to clarify "grazing districts" by changing them to "State Districts" throughout the bill. "the Department" would be changed to "the Commission". The only other change other than language, would be the change in notification of the commission from 14 days to seven days. He presented written testimony from **Bill Lochding, Chair, Montana Grass Conservation Commission. EXHIBIT(ags33a01)**

Proponents' Testimony:

Ray Beck expressed support for the bill because of the changes involving changing the department to the commission.

Steve Pilcher discussed the importance of conservation and utilization of range resources.

Opponents' Testimony: none

Questions from Committee Members and Responses: none

Closing by Sponsor: REP. DEVLIN closed HB 113

EXECUTIVE ACTION ON HB 141

Motion/Vote: SEN. TOM ZOOK moved that **HB 141 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON HB 113

Motion/Vote: SEN. WALT MCNUTT moved that **HB 113 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 245

SEN. RIC HOLDEN presented amendments **SB024501.ads** to the bill **EXHIBIT(ags33a02)**

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 2-9-01
BILL NO HB 113

JUDY H. MARTZ, GOVERNOR
1625 ELEVENTH AVENUE
STATE OF MONTANA
DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684
PO BOX 201601
HELENA, MONTANA 59620-1601

MEMORANDUM

TO: House Agriculture Committee

FROM: Montana Grass Conservation Commission

Bill Lochsing
P.D.A. SCD 8
G.A.

SUBJECT: HB 113

DATE: February 9, 2001

The Commissioners request your support of the above-mentioned Bill as proposed.

We appreciate your support in this matter and look forward to working with the committee on future matters affecting the Grass Commission and Grazing Districts in Montana.

Feb 09 01 11:52a Holiday Inn Express (406)232-1565 P.1

DATE 2-9-01

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: HB 113, HB 141

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike Hamlett	442-0025	Self & LvC Stockmen	113	✓	
Steve Pilcher	442-3420	MT Assn. of State Grazing Districts. MT Stockgrowers Assn.	HB113	✓	
John Semple	443-7481	MT CATTLEWOMAN	HB113	✓	
Ray Beck	444-6667	DNRC	HB113	✓	
RON DEVLIN	442-3966	Rep	HB113	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Agriculture, Livestock and Irrigation** report that **House Bill 113** (third reading copy – blue) **be concurred in.**

Signed: Ric Holden
Senator Ric Holden, Chair

To be carried by Senator Tom Zook

- END -

Committee Vote:
Yes 8, No 0.

350956SC.sjo

AN ACT REVISING THE GRAZING DISTRICT LAWS TO REMOVE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM STATE DISTRICT LAWS EXCEPT FOR ADMINISTRATIVE ATTACHMENT PURPOSES; CHANGING THE REQUIREMENT FOR WRITTEN NOTICE TO THE COMMISSION MEMBERS, WITH REGARD TO MEETINGS, FROM 14 DAYS TO 7 DAYS; CONFORMING USES TO DEFINED TERMS; AMENDING SECTIONS 76-16-102, 76-16-103, 76-16-104, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-112, 76-16-113, 76-16-201, 76-16-202, 76-16-203, 76-16-206, 76-16-208, 76-16-209, 76-16-211, 76-16-212, 76-16-213, 76-16-301, 76-16-302, 76-16-303, 76-16-307, 76-16-309, 76-16-310, 76-16-316, 76-16-317, 76-16-318, 76-16-320, 76-16-323, 76-16-325, 76-16-401, 76-16-402, 76-16-403, 76-16-404, 76-16-406, 76-16-407, 76-16-408, 76-16-409, 76-16-410, 76-16-411, 76-16-412, 76-16-413, AND 76-16-414, MCA; REPEALING SECTION 76-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-16-102, MCA, is amended to read:

"**76-16-102. Purpose.** The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit ~~grazing~~ state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ~~ranch~~ properties ~~as defined herein~~."

Section 2. Section 76-16-103, MCA, is amended to read:

"**76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.

(2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local ~~grazing~~ state district.

(3) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

(4) "Commensurate property" means land that is privately owned or controlled and that is not range.

(5) "Commission" means the Montana grass conservation commission provided for in 76-16-112.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range ~~for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945,~~ for a 5-year period immediately preceding the date of organization of the state district ~~districts~~.

(8) "Directors" means the board of directors of a state district provided for in 76-16-301.

~~(8)~~(9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in ~~grazing~~ state district assets.

~~(9)~~(10) "Permits" are evidence of grazing privileges granted by state districts.

~~(10)~~(11) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(11)~~(12) "Range" is the land within a ~~grazing~~ state district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(12)~~(13) "Secretary" means the secretary of the Montana grass conservation commission.

~~(13)~~(14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

Section 3. Section 76-16-104, MCA, is amended to read:

"**76-16-104. Role of the commission ~~department~~.** (1) The commission ~~department~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.

(2) The commission ~~department~~ may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 4. Section 76-16-106, MCA, is amended to read:

"**76-16-106. Commission fees.** (1) The commission may impose fees against the state ~~grazing~~ districts ~~of the state~~ in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Section 5. Section 76-16-107, MCA, is amended to read:

"**76-16-107. Range for wild game animals.** In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts."

Section 6. Section 76-16-108, MCA, is amended to read:

"**76-16-108. Nature of rights.** (1) ~~Preferences~~ Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter."

Section 7. Section 76-16-109, MCA, is amended to read:

"**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, ~~at its discretion and~~ for good cause

shown, permit additional testimony to be submitted."

Section 8. Section 76-16-111, MCA, is amended to read:

"**76-16-111. What constitutes receipt of notice.** In all cases where notices are given to permittees under this chapter by ~~registered or~~ certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission."

Section 9. Section 76-16-112, MCA, is amended to read:

"**76-16-112. Creation of Montana grass conservation commission -- membership -- meetings -- compensation.** (1) There is a Montana grass conservation commission. The commission ~~must be~~ is composed of five members appointed by the governor to serve staggered 3-year terms. ~~Beginning on January 1, 2000, one member shall serve a 1-year term and two members shall serve 2-year terms, with assignment of terms based on a random drawing.~~

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state ~~grazing~~ district;

(ii) two members who hold active grazing preference rights within a state ~~grazing~~ district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state ~~grazing~~ districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) The commission shall meet annually at the main offices of the department in Helena. The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least ~~14~~ 7 days' written notice

to the commission members of the time and place of the meeting. A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission."

Section 10. Section 76-16-113, MCA, is amended to read:

"**76-16-113. Powers of commission.** The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state ~~grazing~~ districts, including appeals of decisions made by the board of directors of an individual state ~~grazing~~ district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and ~~cooperative~~ state ~~grazing~~ districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter; ~~and~~

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state ~~grazing~~ districts that, for whatever reason, no longer have access to historical grazing preference records;

(4) preparing and standardizing various forms to be used by the state districts and supervising

or regulating the organization and operation of state districts;

(5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

(6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;

(7) requiring state districts to annually furnish itemized financial reports; and

(8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 11. Section 76-16-201, MCA, is amended to read:

"**76-16-201. Procedure to incorporate state district.** (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.

(2) The statement ~~shall~~ must set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the state district or county, which may not be less than 30 days or more than 60 days after receipt of the statement."

Section 12. Section 76-16-202, MCA, is amended to read:

"**76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to incorporate the state ~~grazing~~ district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks~~, the~~ in a newspaper of general circulation in the area. The first publication ~~to~~ must be at least 30 days prior to the date of hearing~~, in a newspaper of general circulation in the area~~.

(2) The commission shall hear evidence offered in support of or in opposition to the creation of

the state district and shall make a full inquiry into the advisability of its creation."

Section 13. Section 76-16-203, MCA, is amended to read:

"**76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the state district, the commission may issue a certificate of approval."

Section 14. Section 76-16-206, MCA, is amended to read:

"**76-16-206. Amending articles of incorporation.** (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the state district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the state district possesses the same powers and is subject to the same obligations as if incorporated under this chapter."

Section 15. Section 76-16-208, MCA, is amended to read:

"**76-16-208. Adoption of bylaws and periodic review -- annual report.** (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated state district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. ~~The first review and update must be completed no later than January 1, 2001. Subsequent~~ A review and update must be completed at reasonable intervals, not to exceed 5 years.

(2) Each state district incorporated under this chapter shall report annually to the commission any

changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the state district. The annual reports must include an updated plat depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences."

Section 16. Section 76-16-209, MCA, is amended to read:

"**76-16-209. Alteration of state district.** (1) A state district may change the boundaries of the state district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the commission after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing."

Section 17. Section 76-16-211, MCA, is amended to read:

"**76-16-211. Dissolution of state district.** (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the state district is no longer feasible, beneficial, and desirable to the majority of members of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve the state district.

(2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the state district is located."

Section 18. Section 76-16-212, MCA, is amended to read:

"**76-16-212. Distribution of state district assets.** (1) When a hearing on the request for dissolution has been held before the commission and the ~~board's~~ consent of the board of directors has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or ~~in~~ both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee

members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. State district ~~District~~ members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process."

Section 19. Section 76-16-213, MCA, is amended to read:

"**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings must be made to the ~~department~~ commission by the directors. Upon the approval of the report, the ~~department~~ commission shall order the state district dissolved."

Section 20. Section 76-16-301, MCA, is amended to read:

"**76-16-301. Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the commission ~~department~~ as provided in this chapter."

Section 21. Section 76-16-302, MCA, is amended to read:

"**76-16-302. Membership in state district.** (1) Membership in ~~the~~ a state district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the state district, except that the agent of a person entitled to membership in the state district may become a member in place of the agent's principal.

(2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the state district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the state district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.

(3) Livestock producers owning or controlling base property within the designated boundaries of the state district and who held grazing preference during the preceding grazing season or at the time of

voting must be designated as permittee members."

Section 22. Section 76-16-303, MCA, is amended to read:

"**76-16-303. Voting rights.** Only permittee members in good standing as set forth in the state district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the state district bylaws."

Section 23. Section 76-16-307, MCA, is amended to read:

"**76-16-307. Leasing of state lands.** State land that is situated within the boundaries of a ~~grazing~~ state district created under this chapter may be leased by one or more members of a ~~grazing~~ state district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a ~~cooperative~~ state district may assist members of a ~~grazing~~ state district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section."

Section 24. Section 76-16-309, MCA, is amended to read:

"**76-16-309. Knowledge of state district boundaries responsibility of livestock owner.** A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district."

Section 25. Section 76-16-310, MCA, is amended to read:

"**76-16-310. Permit required to run livestock in state district.** (1) ~~No~~ An owner or person in control of livestock ~~shall~~ may not permit ~~the same~~ livestock to run at large or under herd within the exterior boundaries of ~~any~~ a state district unless the owner or person in control of ~~such~~ the livestock ~~shall~~ first obtains ~~obtain~~ a grazing permit ~~for same~~ from the ~~such~~ state district.

(2) The owner or person in control of ~~such~~ livestock running at large or under herd within a state district without a permit from the state district or in excess of ~~such~~ the permit ~~shall be~~ is liable for all damages sustained ~~thereby~~ by any member, permittee, or state district that are a result of the person's

unpermitted use of the state district. If ~~any such~~ livestock wrongfully ~~enters~~ enter a state ~~upon premises within such~~ district, the owner or person in control of ~~such~~ the trespassing livestock, who willfully or negligently permits ~~same~~ livestock to run at large within the state district without first obtaining a permit ~~therefor~~ from the state district, ~~shall be~~ is guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be punished by a fine in an amount not less than $10 or more than $500. ~~and, in~~ In addition to a fine, the owner or person is ~~said punishment, shall be~~ liable for all damages that are caused by the trespassing livestock ~~sustained thereby to the party entitled thereto~~.

(3) This provision ~~shall~~ does not require any person to obtain a grazing permit to graze livestock ~~upon~~ on land that the person owns or controls ~~owned or controlled by him~~ within a ~~such~~ state district if the stock ~~so~~ being grazed ~~is~~ are restrained from running at large within ~~such~~ the state district and from grazing ~~upon~~ on any other lands within the state district."

Section 26. Section 76-16-316, MCA, is amended to read:

"**76-16-316. Sale of trespassing livestock.** (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

(2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:

(a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;

(b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and

(c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law."

Section 27. Section 76-16-317, MCA, is amended to read:

"**76-16-317. Disposition of sale proceeds.** (1) The proceeds of the sale ~~shall~~ must be applied by the sheriff, after first deducting ~~his~~ the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs

of the party taking up ~~such~~ the livestock.~~, and the~~ The remainder of the proceeds, if any, may be paid over to the owner of ~~such~~ the livestock, if known.~~, and if~~ If the owner is not known, then ~~such~~ the remainder ~~shall~~ must be deposited with the county treasurer, who shall keep the ~~same~~ remainder of the proceeds in a public fund to be designated state ~~grazing~~ district fund (giving the name of the state district). A separate fund, styled as above, ~~shall~~ must be kept by the county treasurer for each state district ~~of said districts~~ within ~~his~~ that county. The county treasurer shall ~~make a~~ record ~~of~~ the number, ~~and~~ type, and brands, if any, of animals sold ~~and the brands on same, if any~~, the amount received for the animals ~~same~~, and the amount of deductions. The record ~~shall~~ must be open to public inspection.

(2) ~~Any~~ A person claiming ~~making claim of~~ ownership of the ~~such~~ livestock and submitting proof of ownership to the board of county commissioners ~~at any time~~ within 1 year from date of sale ~~and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be~~ is entitled to receive any ~~such~~ excess received from the sale of the ~~such~~ livestock, provided the claim is to the satisfaction of the board.

(3) Any money received from the sale of the ~~any such~~ livestock ~~which shall~~ that is not ~~be so~~ claimed within 1 year after the ~~such~~ sale must ~~shall~~ be transferred to the general fund of the county ~~at the expiration of said period~~."

Section 28. Section 76-16-318, MCA, is amended to read:

"**76-16-318. Unlawful recovery of trespassing livestock.** Any person taking or rescuing from the possession of a state ~~grazing~~ district or an agent of a state district ~~thereof~~ any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 is ~~shall be~~ guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punishable by a fine not exceeding $200."

Section 29. Section 76-16-320, MCA, is amended to read:

"**76-16-320. Maintenance of fences.** (1) ~~Regarding fences within the external boundaries of state districts, the~~ The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the ~~such~~ state district must ~~shall~~ be borne by the ~~such~~ member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the ~~such~~ state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the ~~such~~ cost of construction and maintenance of fence, the state district's proportionate share of the ~~such~~ costs and maintenance must ~~shall~~ be financed only by assessments levied by the state district against the permittee members of the state district and upon consent ~~thereto~~ by 55% of the ~~such~~ permittee members."

Section 30. Section 76-16-323, MCA, is amended to read:

"**76-16-323. ~~District~~ State district finances.** A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district."

Section 31. Section 76-16-325, MCA, is amended to read:

"**76-16-325. Compliance with commission orders required.** (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the state district or county and cite the directors of the state district to appear before the commission.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the state district shall elect new officers. During the period until the

election, the commission may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated."

Section 32. Section 76-16-401, MCA, is amended to read:

"**76-16-401. Distribution of grazing preferences.** When a state district is organized, grazing preferences ~~shall~~ must be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property ~~as heretofore defined~~ may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the grazing preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, ~~preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945,~~ preferring those that have used the range 5 years immediately preceding the organization of the state district ~~such districts~~."

Section 33. Section 76-16-402, MCA, is amended to read:

"**76-16-402. Conversion of temporary permittee lands to dependent commensurate property.** (1) When a ~~such~~ temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by the ~~such~~ permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by the ~~such~~ permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.

(2) However, ~~such~~ temporary permits ~~shall at all times be merely~~ are privileges granted from year to year, and their possession does not ~~shall in no event~~ establish a grazing preference right unless ~~such~~

a grazing preference right ~~be~~ is expressly granted by the state district and in the manner ~~herein~~ provided in this part."

Section 34. Section 76-16-403, MCA, is amended to read:

"**76-16-403. Procedure if reduction in grazing privileges necessary.** (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a ~~cooperative~~ state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district."

Section 35. Section 76-16-404, MCA, is amended to read:

"**76-16-404. Application for grazing preferences.** Any person entitled to grazing preferences within any state ~~grazing~~ district based on dependent commensurate property or commensurate property ~~must~~ shall make application within 1 year after ~~said~~ the state district is ~~shall have been~~ organized to qualify for ~~said~~ grazing preference~~;~~. ~~provided, however~~ However, all permittees ~~shall~~ must be entitled to benefits accruing under 76-16-401 through 76-16-403."

Section 36. Section 76-16-406, MCA, is amended to read:

"**76-16-406. Transfer of grazing preferences.** (1) Upon application by a permittee, the state district with the approval of the commission may allow a grazing preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of grazing preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the grazing preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior

to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.

(3) All expenses involved under the application must be borne by the applicant."

Section 37. Section 76-16-407, MCA, is amended to read:

"**76-16-407. Processing of application for transfer.** (1) When an application for transfer is presented to the board of directors of a state district, the secretary of the state district upon the direction of that board shall give notice ~~thereof~~, setting forth in general the application and the time and place of a hearing ~~thereon~~ on the application as fixed by the board. A copy of the notice ~~shall~~ must be given or mailed to the applicant and ~~shall~~ must be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the state district.~~, and the~~ The notice ~~shall~~ must also be posted for at least 2 full weeks prior to the hearing in three public places within the state district.

(2) The date of the hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections to the application ~~thereto~~."

Section 38. Section 76-16-408, MCA, is amended to read:

"**76-16-408. Effect of transfer of grazing preference.** Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the grazing preference transferred."

Section 39. Section 76-16-409, MCA, is amended to read:

"**76-16-409. Transfer of underlying property.** (1) When the land to which a grazing preference is attached changes its control or ownership, the grazing preference changes with the land and the person

to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing preferences may be revoked by the state district."

Section 40. Section 76-16-410, MCA, is amended to read:

"**76-16-410. Compensation to state district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value ~~shall~~ must be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it ~~shall~~ must be fixed by the commission ~~department~~."

Section 41. Section 76-16-411, MCA, is amended to read:

"**76-16-411. Grazing permits to owners of land not controlled by state district.** (1) When any land is situated within the boundaries of a state district and is not leased or controlled by ~~said~~ the state district and not surrounded by a legal fence, any person owning or controlling ~~such~~ these lands ~~shall have~~ has the right to obtain a grazing permit from the state district, the size of which ~~shall~~ must be determined by the carrying capacity of ~~such~~ the land, full consideration being given for location of necessary stock water. The use of ~~such~~ the permit ~~shall be~~ is subject to all regulations by the state district.

(2) If the person owning or controlling ~~such~~ the land declines to secure ~~such~~ a permit or fails to lease ~~such~~ the land to the state district at a fair lease rental and fails to fence ~~such~~ the land at ~~his own~~ the person's expense, ~~he~~ the person ~~shall~~ is not ~~be~~ entitled to recover damages for trespass by stock grazing under permit, but the state district ~~shall~~ may not issue a permit to use the carrying capacity of ~~such~~ the land."

Section 42. Section 76-16-412, MCA, is amended to read:

"**76-16-412. Revocation of grazing preferences u: failure to obtain permits, pay fees, or obey rules.** (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to

pay grazing fees, the state district shall notify the owner of the land by ~~registered or~~ certified mail that the grazing preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by ~~registered or~~ certified mail that the grazing preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the permittee or owner fails to pay the charges or comply."

Section 43. Section 76-16-413, MCA, is amended to read:

"**76-16-413. Effect of revocation.** (1) When a grazing preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a grazing preference.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws."

Section 44. Section 76-16-414, MCA, is amended to read:

"**76-16-414. Equalization of state district assets.** (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the state district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.

(2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be

as prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may have against a former member.

(3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the grazing preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting."

Section 45. Repealer. Section 76-16-105, MCA, is repealed.

Section 46. Effective date. [This act] is effective upon passage and approval.

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